

COMPLIANCE BOARD OPINION 92-2

October 23, 1992

Mr. James L. Edwards

The Open Meetings Compliance Board has considered two complaints that you have filed regarding alleged violations of the Open Meetings Act, one concerning the County Commissioners of Charles County and the other concerning the Board of Education of Charles County. The Compliance Board has consolidated these complaints and will treat both of them in this opinion.

I

August 11, 1992 Meeting of County Commissioners

Your complaint about the meeting of the County Commissioners on August 11, 1992 was as follows:

On August 11, 1992 the Commissioners of Charles County met for a luncheon meeting at the Physicians Memorial Hospital, La Plata, MD... I wanted to attend this meeting but Commission President Middleton asked me to leave. I left the meeting, however, it is my opinion that the County Commissioners for Charles County did not comply with the sections of the Code concerning open meetings, closed meetings and the required notices for these meetings.

The response of the Charles County government confirms that the meeting in question did occur and that Mr. Edwards was not permitted to attend. Moreover, none of the prerequisites of the Open Meetings Act for a closed session were followed. The determinative issue, therefore, is whether the Open Meetings Act was inapplicable to this meeting, as the commissioners contend.

As the Compliance Board understands the facts, Physicians Memorial Hospital is a private, nonprofit organization. Although the hospital manifestly performs a service of benefit to the residents of Charles County, it is not part of county government. Nor is the board of directors of the hospital a "public body," within the

meaning of §10-502(h) of the Open Meetings Act. Therefore, meetings of the hospital's board of directors are not subject to the Act.

The County Commissioners of Charles County are a "public body," of course. The line-drawing problem becomes difficult when a quorum of the Commissioners are present at a meeting of an entity that is not a public body. As the Attorney General suggests in his Open Meetings Act Manual, "if the Act is otherwise inapplicable to a gathering, the Act does not become applicable merely because a quorum of members of a public body is present." Manual at 4. At the same time, a public body may not escape its obligations under the Act, even in some other entity's forum, if the public body itself engages in "the consideration or transaction of public business." §10-502(g).

It is not clear from the response of the Commissioners that the Commissioners as a group refrained from consideration of county public business during the meeting with the hospital board. The County Attorney states that he attended the meeting "to consult with the Commissioners, as well as to represent them and speak on their behalf, regarding legal matters, personnel matters and the investment of public funds which were scheduled by [the hospital] to be the focus of their quarterly meeting." A consultation between the Commissioners and their attorney implies that the Commissioners themselves engaged in a collective consideration of public business. Under the circumstances, the Compliance Board will not find the Open Meetings Act to be inapplicable merely because the hospital board was the host of the meeting.

The County Commissioners further suggest that the Open Meetings Act was inapplicable to the August 11 meeting because the subject matter of the meeting was "an executive function." The Compliance Board agrees.

The term "executive function" is defined, in pertinent part, as "the administration of ... a law of a political subdivision of the State" Under §27-9B of the Charles County Code, the County Commissioners are authorized to enter into an agreement with a nonprofit organization to operate a hospital "under such terms and conditions as the parties may agree upon" This grant of authority is an alternative to the Commissioners' operating a hospital themselves, which they are empowered to do under §27-9A of the County Code.

A meeting with the hospital board to discuss aspects of the operation of the hospital is unquestionably an "executive function." The County Commissioners have a choice in how they wish to administer §27-9 of the County Code: They can operate a hospital themselves, or, as they have done, they can agree with an outside entity to operate the hospital, implicitly subject to the ongoing oversight of the Commissioners. That choice is for the commissioners in their capacity as the chief

executive body of Charles County, and the Commissioners carry out an "executive function" when they attend, along with the hospital board, to the management details of their choice.¹

Accordingly, the Open Meetings Compliance Board finds that the County Commissioners of Charles County did not violate the Open Meetings Act in their meeting with the Board of Directors of Physicians Memorial Hospital on August 11, 1992.²

II

July 8, 1992 Meeting of the Charles County Board of Education

Your complaint about the meeting of the Board of Education of Charles County on July 8, 1992, indicates that none of the provisions of the Open Meetings Act were complied with in a meeting between a Mr. Joseph Lavorgna and various school bus contractors.

The response of the Board of Education indicates that the meeting in question took place between Mr. Lavorgna, an employee of the School Board, and his staff and members of the Charles County Bus Drivers Association. As the Compliance Board understands the facts, the Board of Education itself was not involved in the meeting.

The Open Meetings Act applies only to a "public body," an entity that "consists of at least 2 individuals" and that is created by one of the formal legal instruments identified in the statute. §10-502(h)(1).³ Mr. Lavorgna and his staff are not a "public body."

¹ The Compliance Board's opinion in this regard does not extend to meetings of the Commissioners regarding annual appropriations to the hospital. Budget consideration is a "quasi-legislative function" under §10-502(j)(2).

² In light of this conclusion, the Compliance Board need not consider the contention of the county that the meeting could permissibly have been closed under exceptions in §10-508(a) of the Open Meetings Act, if the Act were applicable.

³ The expanded definition of "public body" in §10-502(h)(2) is irrelevant to this complaint.

Accordingly, the Open Meetings Compliance Board finds that no violation of the Open Meetings Act occurred in the meeting between Mr. Lavorgna and the school bus contractors on July 8, 1992.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim
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